REGINA v. GOVINDASAMY ARUMUGAM.

[Orig. Crim. Juris. (Rogers, J.) March 19, 1952]

[Singapore — Assize Case No. 5 of 1952]

Criminal Procedure Code, ss. 260 and 262 — Depositions of witnesses in preliminary inquiry — Magistrate's notes not read over to witness in the presence of both Magistrate and accused — Committal — Validity of.

In recording the depositions of witnesses in a preliminary inquiry the provisions of sections 260 to 262 of the Criminal Procedure Code must be strictly complied with. Where the notes taken by the magistrate were not read over to the witness in the presence of both the magistrate and the accused the committal was null and void.

Cases referred to:—

(1) *R. v. Wharmby & Ors.* 31 Cr. App. R. 174.

(2) *R. v. Gee & Ors.* 25 Cr. App. R. 198.

(3) *R. v. Phillips & Quayle* 26 Cr. App. R. 200.

CRIMINAL TRIAL.

A. V. Winslow for the Crown.

D. S. Marshall for the defendant.

The arguments appear sufficiently from the concluding remarks of Rogers, J. below.

Cur. Adv. Vult.

Rogers, J. : —I am going to follow the procedure adopted by Cassels, J. in the case of *R. v. Wharmby & Ors.*[1]. The Jury have not given any decision, and they could not give a decision, because the man was not properly before them.

Members of the Jury, I do not want to detain you any longer in this business. I discharge you once and for all, and you are free to leave the Court any time you want without giving a verdict. You cannot give a verdict, because this man is not properly before you, but if it suits you to remain and watch you may do so. I give my reasons which are as follows:—

At the committal proceedings before the Magistrate there were three gross irregularities. It appears that the depositions of the non-English speaking witnesses were taken there by the Magistrate and signed by him before they had been read over to the deponents. The witness in question was then told to wait in Court until the rising of the Court at the end of the day. The Court rose and the Magistrate retired to his Chambers and the defendant was taken away. The Court Interpreter then called each of the deponents up in turn and read over his or her deposition to him in his own language and got them signed. That was irregularity No. 2 — the fact that they were read over to the deponents in the absence of the Magistrate. The result was that a dispute arose between a witness and an interpreter in this Court as to what she had said, and it is impossible to say who is correct. Had the Magistrate been presiding on the Bench at that time he would have been able to come and testify to this effect himself.

And the third and worst irregularity of all is that these depositions were read over to the deponents after the defendant had been removed from the Court.

Now, it has been held in England that the provisions as to taking depositions must be implicitly complied with and that there must not be the slightest deviation from the law. Any such deviation in these Courts from the similar law, i.e. sections 260–2 Criminal Procedure Code results in the committal being completely null and void. I can appreciate why things have been done in this manner in the Police Courts. They have been to save time, and knowing how busy those Courts are, I can sympathize with the Magistrates and Justices of the Peace who sit there in their endeavours to save it. But in all the English cases to which I have been referred, in each one the Court of Criminal Appeal or trial Judge has said that the fact of saving time cannot regularise that which is bad. In addition to the case of *R. v. Wharmby*[1], to which I have already alluded, the cases of *R. v. Gee & Ors.*[2] and *R. v. Phillips & Quayle*[3], are in point.

Coming back, therefore, to this case, I order that the charge be quashed. This man is never properly before this Court because the committal proceedings by the Magistrate are null and void. The jury is therefore discharged, and the Prosecution are left to take what other steps they may think fit.

I would also add that what Cassels, J. says in the case of *Wharmby*[1] applies equally here that it is most unfortunate that such an unnecessary expenditure of public money should be involved.

The defendant is discharged and it is a matter for the Prosecution to decide what to do hereafter. That is as far as I can go.

His Lordship to *Mr. Winslow:* You can re-arrest him outside if you want.

Mr. Winslow: I have given instructions.

COMPTROLLER OF INCOME TAX v. CHENG POH SENG.

[Orig. Civ. Juris. (Murray-Aynsley, C.J.) March 19, 1952]

[Singapore — Special Case No. 5 of 1951]

Income Tax Ordinance, 1947, s. 59(1) — Furnishing return of income by post — Sufficient compliance.

Section 59(1) of the Income Tax Ordinance, 1947 empowers the Comptroller of Income Tax to give notice to any person to furnish a return of income. In this case a tax payer completed the form of return and sent it through the post in the envelope provided with the form.

Held, that such posting was a sufficient compliance with the section.

INCOME TAX CASE.

L. Rayner (Crown Counsel) for the Comptroller of Income Tax.

Murray-Aynsley, C.J. : — In this case the question was whether proof of posting was a sufficient compliance with the requiring of a return by the Comptroller of Income Tax. Counsel for the Comptroller agreed with the contention of the taxpayer and I decided accordingly.

Order accordingly.

GOVERNMENT OF THE FEDERATION OF MALAYA v. WONG HOI ONN.

[Orig. Civ. Juris. (Taylor, J.) March 20, 1952]

[Kuala Lumpur — Civil Suit No. 16 of 1951]

Gaming — Betting and Sweepstakes Duties Ordinance — Claim for duty payment — Whether officials of illegal association personally liable — Claim out of assets.

The defendant, as President of an association subsequently declared illegal and wound up, was found to be the only person managing and controlling the association. He was sued for unpaid duty on sweepstakes promoted in the name of the association.

Held, that the President in this case was also either the Secretary or a similar official.

Held further, that the Betting and Sweepstakes Duties Ordinance is a charging statute and must be strictly construed; the duty is charged on the amount subscribed from ticket money and the promoter, secretary or similar official cannot be personally liable in debt for unpaid duty. Where the association has been wound up such unpaid duty may be claimed out of assets in the hands of the Official Assignee who wound up the association.

ACTION.

A. M. Webb (Federal Counsel) for the plaintiffs.

F. G. Charlesworth for the defendant.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — In this action the Federal Government sued Wong Hoi Onn for $64,000 odd, being the duty under the Betting and Sweepstakes Duties Ordinance, 1948, on five sweepstakes conducted during 1950 in the name of the Selangor Health and Strength Association.

The facts shortly are that the Association was founded many years ago as an athletic club. It was revived after the war and at the material time had a small club house in the suburbs of Kuala Lumpur with a boxing ring, equipment for weight-lifting and two badminton courts. The defendant was the President. According to the rules, the Association was to be managed by a Committee consisting of the President, the Secretary, the Treasurer and eight elected members. It was, however, in fact directed and managed almost entirely by the President alone. There was a Nominal Secretary but he was in fact a paid full-time clerk. The Committee did not function. The rules provided for active members who paid an entrance fee and a subscription of $2 a month, and for associate members who paid $1 a year but no entrance fee. The total membership is stated to have been about 50,000 and the club had an office in the town which at one time was staffed by forty clerks. Obviously, such an Association could not have even 1,000 members who actually took part in boxing. The truth of the matter is that a few dozen members took part in the boxing and weight-lifting and possibly a few score of their friends came to watch and play a little badminton. The Association was really two associations in one — a small but genuine athletic club with a very large sweepstake club operating in conjunction, under the same name, and the whole concern managed and controlled by one man, the President.

In 1950 some difficulties arose; some of the officers were prosecuted; the proceedings extended over some months but ended in acquittal of all the accused, meantime, payment of duty on the sweepstakes had fallen into arrears and finally the Association was dissolved under statutory powers and liquidated by the Official Assignee; after payment of sundry creditors and costs he has a disposable surplus of about $6,000 only. The Government appear to be in the exasperating position in which banks and other large concerns